IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 145 OF 2004

M/s.Mohan Travels .... Petitioners
V/s
State of Maharashtra & Ors.. .... Respondents.

Office Notes, Office Memoranda of Coram, appearances Court's orders or directions and Registrar's orders.) Court's or Judge's Orders

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Mr.R.G.Ketkar, Adv. for the petitioners.

Mr.S.R.Nargolkar, AGP for R.Nos.1 to 4.

CORAM: V.G.

PALSHIKAR

AND

V.M. KANADE, JJ.

15.06.2006.

PC:

By this petition the petitioner seeks direction requiring the respondent to refund the tax collected from the petitioner illegally.

2. The petitioner applied for and was ultimately granted registration of an air conditioned vehicle to ply as transport vehicle with capacity of 18 passengers. However he was taxed on

the assignable capacity of the vehicle holding it to be 39. The petitioner departmentally challenged it by way of an appeal and it has been held that the charging on the basis of assignable capacity is wrong and the direction is issued to charge on actual capacity mentioned in the registration book.

3. This action gave rise to the right in the petitioner to demand and obtain refund of the excess tax illegally collected. The department having held that the tax was to be levied only on 18 seats which was factually the capacity is liable to refund the money. Proper remedy to do so is to file a suit for recovery of money due, where the petitioner can prove as a matter of fact wrongful recovery and right to return of the said money recovered. That being the proper remedy, leaving it open to the petitioner, this petition is disposed of.

15.6.06